

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In Re:
PERFORMANCE TRANSPORTATION SERVICES,
INC., *et al.*,
Debtors.

Chapter 7
Case No. 07-04746 (MJK)

MARK S. WALLACH, Chapter 7 Trustee of Performance
Transportation Services, Inc., *et al.*,
Plaintiff,
v.

Adv. Pro. No. 09-01267 (MJK)

CIT GROUP/BUSINESS CREDIT, INC., *et al.*,
Defendants.

**STIPULATION DISMISSING WITH PREJUDICE TRUSTEE'S COMPLAINT
TO AVOID AND RECOVER TRANSFERS PURSUANT TO
11 U.S.C. §§ 502, 547, 548 AND 550**

WHEREAS, on November 19, 2007, each of the Debtors filed a voluntary petition for relief under the provisions of Chapter 11 of the United States Bankruptcy Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Western District of New York (the "Bankruptcy Court"). The Debtors' bankruptcy cases are jointly administered under Case No. 07-04746; and

WHEREAS, on July 14, 2008, the Bankruptcy Court entered an Order converting the Debtors' cases to cases under Chapter 7 of the Bankruptcy Code. [07-04746, Dkt. Nos. 969, 975]; and

WHEREAS, on July 15, 2008, the United States Trustee appointed Mark S. Wallach as the Chapter 7 Trustee for the Debtors' bankruptcy cases (the "Trustee"). [07-04746, Dkt. Nos. 971, 980]; and

WHEREAS, on or about October 30, 2009, the Trustee commenced the captioned adversary proceeding by the filing of a complaint with the Bankruptcy Court (along with any subsequent amendments to such complaint, the "Complaint"); and

WHEREAS, on May 21, 2010, defendants Van Kampen Senior Loan Fund ("Senior Loan") and Van Kampen Senior Income Trust ("Senior Trust" and together with Senior Loan, the "Van Kampen Entities") filed their motion to dismiss the Complaint (the "Motion to Dismiss"); and

WHEREAS, responses or objections to the Motion to Dismiss were required to be filed with the Court by no later than June 9, 2010; and

WHEREAS, no response or objection to the Motion to Dismiss was filed with the Bankruptcy Court; and

WHEREAS, the Trustee wishes to dismiss the Complaint as against the Van Kampen Entities because the amount sought by the Trustee in the Complaint against each of the Van Kampen Entities falls below the jurisdictional threshold as set forth in 11 U.S.C. §547(c)(9);

NOW, THEREFORE, IT IS STIPULATED AND AGREED, by and between the parties that pursuant to Rule 7041(a)(1)(ii) of the Federal Rules of Bankruptcy Procedure, the Complaint is hereby dismissed as against the Van Kampen Entities, with prejudice, without costs to any of the aforementioned parties.

DATED: July 8, 2010

GROSS, SHUMAN, BRIZDLE &
GILFILLAN, P.C.

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SO-ORDERED:

UNITED STATES BANKRUPTCY JUDGE